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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/787,981	03/22/2001	Herbert Ulrich	879.154USWO	9996

23552 7590 07/30/2003

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EXAMINER

LEYSON, JOSEPH S

ART UNIT	PAPER NUMBER
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1722

DATE MAILED: 07/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/787,981

Applicant(s)

ULRICH ET AL.

Examiner

Joseph L yson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-14 is/are pending in the application.
- 4a) Of the above claim(s) 14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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1. Newly submitted claim 14 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

This application contains claims directed to the following patentably distinct species of the claimed invention: Species I, drawn to figs. 2 and 3 and to claims 7-13; and Species II, drawn to fig. 4 and to claim 14.

If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a). Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must

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be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 14 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

2. This application contains claim 14 drawn to a nonelected invention. A complete reply to the final rejection must include cancelation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 7-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Schott, Jr.(-418).

Schott, Jr.(-418) teaches a device, that corresponds to the instant device, for producing an extruded plastic pipe 14 having a longitudinal axis and an outer surface defining an outer

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diameter, which includes a calibrating station 18 including a first lamellae ring and a second lamellae ring, the first and second lamellae rings each including a plurality of lamellae 20, the first lamellae ring being defined by a first set of horizontally aligned lamellae 20 (figs. 1 and 2), the second lamellae ring being defined by a second set of horizontally aligned lamellae 20 (figs. 1 and 2), and a plurality of adjustment arms 30, 32, 40, each adjustment arm 30, 32, 40 being secured to a separate lamellae 20 of the first and second ring, the first lamellae ring being located at a first position along the longitudinal axis of the pipe 14 (figs. 1 and 2), and the second lamellae ring being located at a second position along the longitudinal axis of the pipe and being spaced apart around the circumference of the pipe so as to form gaps between the lamellae 20 of the second ring (figs. 1 and 2), the lamellae 20 of the first and second rings being individually adjustable radially relative to the outer surface of the pipe by its individual adjustment arm 30, 32, 40, wherein contact between the outer surface of the pipe 14 and the calibrating tools, i.e., the elements of the calibrating station, adjusts the outer diameter of the pipe 14 (col. 3, lines 7-25). The lamellae 20 each includes a contacting edge defined by rollers 24 having a fixed contour. This contour limits the extent of the expansion

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of the bubble and thus corresponds to a largest possible outer diameter of the tube, i.e., pipe 14. The adjustment of the lamellae is done by motorized means 70 or manually 60. The lamellae 20 of the first lamellae ring are spaced apart around the circumference of the pipe 14 so as to have gaps between the lamellae 20 (figs. 1 and 2). The lamellae of the second ring are positioned to align with the gaps between the lamellae of the first ring (figs. 1 and 2). The lamellae of the first and second rings interlock in a mesh pattern (figs. 1 and 2).

5. Applicant's arguments with respect to claims 7-13 have been considered but are moot in view of the new ground(s) of rejection.

Applicants argue that the lamellae 20 of Schott, Jr.(-418) are not intended to calibrate or alter the size of the pipe. The examiner respectfully disagrees. Schott, Jr.(-418) discloses that the pipe 14 is blown into a bubble, that the "maximum size bubble" is guided by the lamellae 20, and that the lamellae 20 is positioned "to vary the size of the defined circle" (col. 3, lines 7-25; figs. 1 and 2).

Applicants argue that Schott, Jr.(-418) does not disclose the adjustment arms 30, 32, 40 are each connected to separate lamellae 20, or lamellae 20 that are individually adjustable relative to the outer surface of the pipe without affecting the

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position of other connected lamellae because the lamellae 20 are interconnected with various shafts, arms, rods, cranks and rings. The examiner respectfully disagrees. Schott, Jr.(-418) does disclose that the adjustment arms 30, 32, 40 are each connected to separate lamellae 20 of the first and second ring, and that lamellae 20 are individually adjustable relative to the outer surface of the pipe by the adjustment arms 30, 32, 40.

The examiner does agree that Schott, Jr.(-418) does NOT disclose the lamellae 20 are individually adjustable without affecting the position of other connected lamellae. However, it should be noted that the lamellae being individually adjustable "without affecting the position of other connected" lamellae is NOT a positive instant claim limitation. Furthermore, applicants even disclose (see instant specification, i.e., p. 4) that, while the lamellae are individually adjustable, they can be controlled in common in a centrally controlled manner.

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this

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action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph Leyson whose telephone number is (703) 308-2647. The examiner can normally be reached on M-F(8:30-6:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on (703) 308-0457. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

jl

jl

July 28, 2003

James P. Mackey
JAMES P. MACKEY
PRIMARY EXAMINER
7/28/03